

# Employers Can No Longer Mute Departing Workers

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Michael Schmidt was quoted in *Inc.* discussing the National Labor Relations Board overturning a 2020 ruling that allowed employers to make confidentiality and non-disparagement clauses a binding part of severance agreements. Sources note that it's likely the February 21 ruling will be appealed, and it is unclear whether the decision can ultimately survive legal scrutiny. It is also likely that this rule on severance agreements may shift back to prior Board precedent, once again, if and when there is a Republican administration in Washington in 2024, notes Michael. In addition, it appears that the Board's decision will only retroactively invalidate severance agreements entered into after the February 21 decision, he says. If the Board determines that a particular severance agreement or larger policy with respect to a severance agreement violates the NLRA. He said that the employer can be cited for an "unfair labor practice," which subjects the company to certain monetary and injunctive remedies. He adds that the easiest way to avoid such citations altogether is to ditch the clauses.

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